

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARTIN JOHN GONZALES,

Petitioner,

vs.

No. 16cv00550 KG/SCY

JOHN SANCHEZ, WARDEN,

Respondent.

ORDER TO SHOW CAUSE

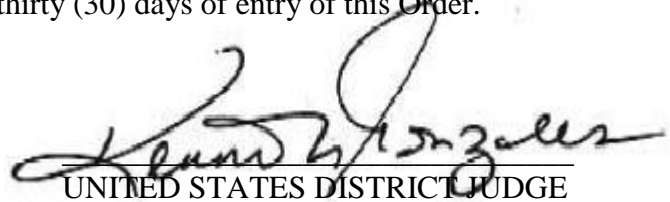
THIS MATTER is before the Court under rule 4 of the Rules Governing Section 2254 Cases on the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Martin John Gonzales on June 9, 2016. (Doc. 1). It appears from the Petition that Gonzales is not in state custody and, therefore, the Court lacks jurisdiction to consider the Petition. The Court will order Gonzales to show cause why this case should not be dismissed for lack of jurisdiction.

The Court has an ongoing duty to determine the existence of proper jurisdiction and must dismiss the action if, at any time, it determines there is a lack of jurisdiction. *Tuck v. United Services Auto. Ass'n*, 859 F.2d 842, 844 (10th Cir. 1988); *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974). Under 28 U.S.C. § 2254, this Court may entertain an application for a writ of habeas corpus “in behalf of a person *in custody* pursuant to the judgment of a State Court.” 28 U.S.C. § 2254(a) (emphasis added). The custody requirement is jurisdictional. *Mays v. Dinwiddie*, 580 F.3d 1136, 1138-1139 (10th Cir. 2009).

Gonzales is proceeding pro se under 28 U.S.C. § 2254. However, in his Petition, he states that “[o]n 4-21-16 the 12th district court ordered my release. I was released on 4-29-2016.”

(Doc. 1 at 3). Gonzales also provides a private address as his address of record. (Doc. 1 at 17). Based on these statements and information, it appears that Gonzales is not in custody and was not in custody at the time the Petition was filed. If Gonzales is not in custody, then this Court lacks jurisdiction and must dismiss the Petition. Therefore, Gonzales will be required to show cause and explain why the Petition should not be dismissed for lack of jurisdiction based on failure to meet the custody requirement of 28 U.S.C. § 2254 within thirty (30) days. If Gonzales does not show cause within that time period, the Court may dismiss this case without further notice.

IT IS ORDERED that Petitioner Martin John Gonzales show cause why this case should not be dismissed for lack of jurisdiction within thirty (30) days of entry of this Order.



UNITED STATES DISTRICT JUDGE